



County of Los Angeles CHIEF EXECUTIVE OFFICE

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SACHI A. HAMAI
Interim Chief Executive Officer

January 22, 2015

To: Supervisor Michael D. Antonovich, Mayor
Supervisor Hilda L. Solis
Supervisor Mark Ridley-Thomas
Supervisor Sheila Kuehl
Supervisor Don Knabe

From: Sachi A. Hamai
Interim Chief Executive Officer

Board of Supervisors
HILDA L. SOLIS
First District

MARK RIDLEY-THOMAS
Second District

SHEILA KUEHL
Third District

DON KNABE
Fourth District

MICHAEL D. ANTONOVICH
Fifth District

SACRAMENTO UPDATE

Executive Summary

This memorandum contains reports on the following:

- **Pursuit of County Position on a State Budget Item.** The Governor's FY 2015-16 Proposed Budget proposes \$533.0 million in additional funding to repay a portion of the remaining \$800.0 million in State mandate deferrals owed to local governments for costs incurred prior to FY 2003-04. The County would receive an estimated \$88.0 million from this amount. In addition, the Governor's Proposed Budget continues to suspend several State mandates that are critical public services, but currently ineligible for State reimbursement. Therefore, unless otherwise directed by the Board, consistent with existing policies to support legislation to: 1) set aside a certain date for the payment of deferred State mandates, and 2) seek additional funding for programs where service needs have outpaced stagnant or slow-growing revenues, **the Sacramento advocates will support the Governor's proposal to repay the remaining \$800.0 million in pre-2004 mandate deferrals owed local governments and will request that the FY 2015-16 State Budget Act reinstate critical suspended State mandates.**
- **Pursuit of County-Sponsored Legislation.** Unless otherwise directed by the Board, consistent with Board-approved policy to support or sponsor legislation that would clarify that self-insured governmental entities are not liable for the workers' compensation benefits for employees of contracted temporary service

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agencies whose insurer becomes insolvent, and support proposals that confirm that such liabilities are covered by the California Insurance Guarantee Association (CIGA), **the Sacramento advocates will pursue County-sponsored legislation to clarify existing law that CIGA is responsible for covering workers' compensation claims of legally-insured general employers, specifically those contracting with self-insured government entities and whose insurer becomes insolvent.**

Pursuit of County Position on a State Budget Item

The Governor's FY 2015-16 Proposed Budget proposes \$533.0 million in additional funding to repay a portion of the remaining \$800.0 million in State mandate deferrals owed to local governments for costs incurred prior to FY 2003-04. Of the \$533.0 million, counties statewide would be repaid a total of \$390.0 million in FY 2015-16, of which the County would receive an estimated \$88.0 million.

On November 2, 2004, California voters overwhelmingly approved **County-supported Proposition 1A**, also known as the *Protection of Local Government Revenues* ballot initiative. One of the underlying provisions of Proposition 1A was the requirement of the State to, on an annual basis and beginning on July 1, 2005, fully fund each of the legislative mandates on local governments or suspend their operation. While this State requirement helped secure budgetary relief and/or reduce operational strains on local governments, Proposition 1A did not secure reimbursement to local governments for unpaid mandate costs incurred prior to FY 2004-05. To address this outstanding issue, AB 138 (Chapter 72, Statutes of 2005) statutorily required the State to complete these repayments within 15 years concluding with FY 2020-21. The first year in which the State appropriated funding to repay counties for deferred mandate payments was FY 2006-07. That year, the County received \$24.3 million in deferred mandate payments.

The State did not appropriate further funding to repay counties for deferred mandate payments until the FY 2014-15 State Budget Act, which established a plan for a phased approach to fully retire State debt by no later than FY 2017-18, including full repayment of the unfunded State mandate costs for local governments, schools, and community colleges. The FY 2014-15 State Budget Act included the County-supported allocation of \$100.0 million in additional funding to repay a portion of the pre-2004 mandate deferrals owed to local governments, of which the County received

\$16.5 million. In addition to the pre-2004 mandate deferrals, the Governor's FY 2015-16 Proposed Budget continues to suspend most State mandates not related to law enforcement or property taxes. As such, those County departments that continue to, or should continue to, perform crucial public services established under State legislation, that are now optional as suspended mandates, cannot seek State reimbursement.

This office and the Auditor-Controller support the Governor's proposal to repay the remaining \$800.0 million owed local governments for State mandate costs incurred prior to FY 2003-04. In addition, we will request that the Administration include in the FY 2015-16 State Budget Act the reinstatement of State mandates which are currently suspended but critical to County constituents. Therefore, unless otherwise directed by the Board, consistent with existing policies to support legislation to: 1) set aside a certain date for the payment of deferred State mandates, and 2) seek additional funding for programs where service needs have outpaced stagnant or slow-growing revenues, **the Sacramento advocates will support the Governor's proposal to repay the remaining \$800.0 million in mandate deferrals owed local governments and will request that the FY 2015-16 State Budget Act reinstate critical suspended State mandates.**

The Governor's FY 2015-16 budget proposal to repay pre-2004 mandate deferrals owed to local governments is supported by the California State Association of Counties. Currently, there is no registered opposition on file for this proposal. This item will be considered in State Budget Committee hearings which will convene in the coming weeks.

Pursuit of Position on County-Sponsored Legislation

Workers' Compensation Liability for Contracted Temporary Workers

Consistent with Board-approved policy to support or sponsor legislation that would clarify that self-insured governmental entities are not liable for the workers' compensation benefits for employees of contracted temporary service agencies whose insurer becomes insolvent, and support proposals that confirm that such liabilities are covered by the California Insurance Guarantee Association (CIGA), **the Sacramento advocates will pursue County-sponsored legislation that would amend existing law to clarify that in the event a self-insured governmental entity contracts with a general employer whose workers' compensation carrier becomes insolvent, CIGA would carry the workers' compensation liability.**

Under existing law, a special employer who obtains temporary workers through a general employer is considered to be in compliance with workers' compensation insurance coverage requirements, if the special employer has entered into a valid and enforceable contract under which the general employer agrees to obtain, and has in fact obtained, workers' compensation insurance coverage for the temporary workers.

The Chief Executive Office - Risk Management Branch (CEO-RMB) and County Counsel indicate that the California Insurance Guarantee Association pays the claims of insolvent property and casualty insurance carriers that are licensed in the State. This is accomplished by spreading losses suffered as a result of an insurer's insolvency throughout the insurance industry. CIGA operations are funded by a surcharge on premiums charged for insurance policies. CEO-RMB and County Counsel report that in recent years, CIGA has taken the position that claims made by temporary contract agencies that contract with special employers, such as government entities, are not covered claims despite the premiums and surcharges paid for CIGA coverage. Under CIGA's argument, the special employer is liable, which leads the special employer to seek indemnification from the general employer via lawsuit. As a result, the general employer (the temporary contract agency) would be paying twice for the benefit of coverage: once through premiums and surcharges paid for CIGA coverage, and a second time under the indemnification clause found in the contract with the special employer (the government entity).

The Chief Executive Office - Risk Management Branch and County Counsel note that this interpretation contradicts the purpose of CIGA, which is to cover organizations and their employees from the insolvency of insurance companies. This nullification of CIGA's protections exposes self-insured governmental agencies, acting as special employers, to millions of dollars in duplicate workers' compensation and litigation costs for liabilities that were legally insured. The County acts as a special employer when it contracts with temporary service agencies to meet short-term resource needs. All such contracts require the temporary service agency to maintain workers' compensation insurance to cover their employees and contain related provisions indemnifying the County. The cost of workers' compensation premiums is calculated into the temporary service agency contract rates paid by the County. Despite this coverage, CEO-RMB and County Counsel indicate that due to CIGA's position, the County has been exposed to and will incur millions of dollars in duplicate workers' compensation liabilities.

Therefore, unless otherwise directed by the Board, consistent with existing Board-approved policy to support or sponsor legislation that would clarify that self-insured governmental entities are not liable for the workers' compensation benefits employees of contracted temporary service agencies whose insurer becomes insolvent, and support proposals that confirm that such liabilities are covered by CIGA,

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the Sacramento advocates will pursue County-sponsored legislation to clarify that CIGA is responsible for covering workers' compensation claims of legally-insured general employers, specifically those contracting with self-insured government entities and whose insurer becomes insolvent.

This proposed legislation would help protect the legal interests of the County and other self-insured government entities, legally-insured general employers whose insurer becomes insolvent, and the fiscal integrity of taxpayer monies by ensuring employers are not exposed to duplicate workers' compensation liabilities.

We will continue to keep you advised.

SAH:RA
MR:PC:DE:ma

c: All Department Heads
Legislative Strategist
Local 721
Coalition of County Unions
California Contract Cities Association
Independent Cities Association
League of California Cities
City Managers Associations
Buddy Program Participants